STATE OF MICHIGAN

COURT OF APPEALS

JOANNE ADAMS,

Plaintiff-Appellee,

v

LEMONDE BISTRO, LLC,
d/b/a DISTRICT 211,

Defendant-Appellant,

and

THE GLOBE BUILDING,

Defendant.

UNPUBLISHED
June 15, 2006

No. 266685
Kalamazoo Circuit Court
LC No. C04-000365-NO

Before: O'Connell, P.J., and Murphy and Wilder, JJ.

PER CURIAM.

In this slip and fall case, defendant Lemonde Bistro[1] appeals by leave granted the circuit court's order denying its motion for summary disposition. We reverse.

On October 27, 2001, plaintiff slipped and fell down stairs on her way to the restroom in defendant's restaurant. The circuit court found a genuine issue of material fact, accepting plaintiff's claimed inference that she slipped on grease, which was predicated on her description of loosing her footing on something slick, coupled with her allegations that the restaurant's employees carried food over the stairs and that the lighting over the stairs was poor.

This Court reviews a trial court's decision on a motion for summary disposition de novo. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999).

[1] Defendant Globe Building is not involved in this appeal; therefore, for purposes of this opinion, our reference to "defendant" pertains to Lemonde Bistro unless otherwise indicated.

To establish causation in fact through circumstantial evidence, a plaintiff must "set forth specific facts that would support a reasonable inference of a logical sequence of cause and effect." *Skinner v Square D Co*, 445 Mich 153, 174; 516 NW2d 475 (1994). In opposing a motion for summary disposition, a party cannot establish a genuine issue of material fact through "conjecture and speculation." *Libralter Plastics, Inc v Chubb Group of Ins Cos*, 199 Mich App 482, 486; 502 NW2d 742 (1993).

We find that plaintiff has failed to establish a triable factual issue regarding the cause of her fall. Plaintiff testified that the step felt slick "like ice" or "like grease." However, neither she, nor any of the other deposed witnesses in this case could actually identify the presence of grease or any other foreign substance on the step where she slipped. Furthermore, there is no documentary evidence in the record that establishes that the restaurant staff was actually carrying food up or down the stairs at issue. Plaintiff's suggestion of grease on the step is, therefore, entirely speculative.

Plaintiff's alternative argument – that the step itself or the metal strip on the edge of the step was defective, and that it caused her to slip and fall – did not play any role in the circuit court's denial of defendant's motion for summary disposition. This argument is rather sketchy because plaintiff has presented no evidence that the step was defective. Assuming without deciding that the metal edge of the step presented a hazard and caused plaintiff's fall, and that defendant had or should have had knowledge of this alleged hazard, we hold that the metal edge was open and obvious.

The possessor of premises has a general duty to protect invitees against an unreasonable risk of harm due to a dangerous condition on the premises unless the condition is so open and obvious that an invitee could be expected to discover it. *Bertrand v Alan Ford, Inc*, 449 Mich 606, 609-610; 537 NW2d 185 (1995). The open and obvious danger doctrine calls for an objective inquiry into the condition itself and into the average person's ability to casually assess the danger it poses. *Lugo v Ameritech Corp, Inc*, 464 Mich 512, 524; 629 NW2d 384 (2001); *Novotney v Burger King Corp*, 198 Mich App 470, 475; 499 NW2d 379 (1993).

Plaintiff conceded that the metal edge of the step "was there to be seen" although she said that she did not realize it was metal until she had already slipped and fallen. Metal possesses visual characteristics that make it stand out from other materials, as is evident from the photographs in the record. The smoothness of a metal surface lends itself to casual observation. Although plaintiff encountered the stairs for the first time, an average person in her position would have registered the smooth metal edge of the step and inferred its probable slipperiness. Moreover, the metal edge of a step is open and obvious not only because it is metal, but also because it is an edge. Setting one's foot on the edge of a step poses the obvious danger of leaving the foot with no adequate support. [2]

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[2] Plaintiff also alleged that the lighting over the stairs was poor. On the lighting issue, both plaintiff and the circuit court relied on *Nezworski v Mazanec*, 301 Mich 43; 2 NW2d 912 (1942), where the plaintiff fell down stairs, which she could not see because there was no direct light

(continued…)

Although plaintiff argued, and the circuit court agreed, that she could not have avoided the stairs, plaintiff has not suggested that the metal edge of the step was unavoidable.[3] Plaintiff testified that the width of the metal edge was "half to 5/8 of an inch." She has not claimed that the step itself was too narrow, nor is this suggested by the photographs. Thus, on this record, plaintiff could have avoided stepping on the metal edge.

Because plaintiff failed to raise a genuine issue of material fact that a substance on the step caused her slip and fall, and because any alleged defect in the step itself was open and obvious, without the existence of a special aspect, we reverse the circuit court's decision and remand for entry of judgment in favor of defendant.

Reversed and remanded for entry of judgment in favor of defendant. We do not retain jurisdiction.

/s/ Peter D. O'Connell
/s/ William B. Murphy
/s/ Kurtis T. Wilder

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over them. The facts of *Nezworski* are distinguishable. Unlike the plaintiff in *Nezworski*, plaintiff here conceded that she could see the stairs. She also conceded that she noticed the metal edge of the step. She claimed that she could not see any grease on the step, not because of poor lighting, but because "you can't see grease on metal or brick really." Because plaintiff has established no causal link between the allegedly poor lighting and her fall, the issue of whether the lighting was poor is immaterial.

[3] We note that, at the hearing on the motion for summary disposition, defendant brought up the fact that there is an elevator to the lower level, which, if true, would make the entire stairwell also avoidable.